

Doc # 5506
ADOPTED
7/14/92

RELEASE OF GRANTEE'S COVENANT IN SUPPORT OF ART

AND

DECLARATION OF RESTRICTIONS IN SUPPORT OF ART

This Release of Grantee's Covenant in Support of Art and Declaration of Restrictions in Support of Art is made this ____ day of _____, 1992, by and between the Boston Redevelopment Authority, a public body politic and corporate existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended (hereinafter referred to as the "BRA"), and _____, Trustee of Mystic Studios Trust under Declaration of Trust dated January 14, 1987 (hereinafter referred to as the "Owner").

WHEREAS, Owner is the owner of certain condominium units at 557 Tremont Street, Boston, Massachusetts set forth in Exhibit A attached hereto and incorporated herein (hereinafter referred to as the "Affordable Units");

WHEREAS, the Affordable Units have been restricted by a Grantee's Covenant in Support of Art (hereinafter referred to as the "Covenant") attached to the Land Disposition Agreement between St. Cloud Development Trust, a joint venture of Chestnut Associates and the Boston Center for the Arts, Inc. and the BRA, dated January 28, 1985 and recorded at the Suffolk County Registry of Deeds in Book _____, Page _____ (hereinafter referred to as the "LDA") as Exhibit D and attached to the Deed from the BRA to St. Cloud Development Trust, dated January 28, 1985 and recorded at the Suffolk County Registry of Deeds in Book 11379, Page 227 (hereinafter referred to as the "Deed"); and

WHEREAS, the BRA and Owner desire to release the Covenant and replace it with a Declaration of Restrictions in Support of Art;

NOW, THEREFORE, the BRA and Owner for consideration the sufficiency of which is hereby acknowledged hereby agree as follows:

1. Release of Grantee's Covenant in Support of Art. The BRA hereby releases the Covenant and all restrictions contained therein.

2. Declaration of Restrictions in Support of Art. Owner hereby declares that the covenants and restrictions set forth in this Section 2 shall take effect with regard to the seven (7) dwelling units set forth in Exhibit A hereto, shall run with the land and shall be binding upon all parties and persons owning an Affordable Unit, or claiming under Owner.

Owner covenants for the Owner, its successors and assigns, and every successor in interest, that the seven (7) dwelling units listed in Exhibit A hereto, shall be used exclusively for the purpose of leasing said dwelling units to artists of low or moderate income, as defined hereafter, for combined use as working studios and residences. Artists of low or moderate income shall mean persons whose primary occupation consists of the creation of works of arts, such as but not limited to, literature, film, performing arts, painting and sculpture, which require studio space and whose income, i.e., that amount, or combined amount, upon which he or she, and any proposed co-occupants, are required to pay Federal income taxes, does not exceed 80% of the median family income for the Boston Metropolitan Area. Lease terms shall not exceed a one year period. Owner shall annually provide to the BRA certification that all rents, tenant incomes and tenant occupations satisfy the terms and conditions of this Declaration. This restriction is intended to benefit property of the BRA, located at 539-551 Tremont Street, and abutting the property burdened hereby, which property is devoted to uses promoting the growth of the arts in the City of Boston. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty years from the date this Declaration is recorded, at which time this Covenant may be extended for one period of three years in the manner provided by law.

The consideration for the conveyance of the property described in the LDA and Deed, includes Owner's obligations as set forth in this Declaration, and the parties mutually agree that any violation of said Declaration or any of its terms and conditions would cause damages to the BRA in an amount difficult to ascertain. It is therefore agreed by the BRA and Owner that in the event of any violation(s) of the terms and conditions hereof remaining uncured for a period of sixty (60) days or more after receipt of written notice, the damages flowing from such violation(s) shall consist of that amount of income received by Owner as a result of said violation(s). Provided, however, that if Owner is acting in good faith and with due diligence with regard to its obligation(s) hereunder including, without limitation, its obligation(s) to cure, and if Owner is prevented from seasonably curing any violation(s) for causes beyond its control, then, in that event, Owner shall not be liable for damages described herein for such violation(s). The payment of any such damages by Owner shall not preclude the BRA's pursuit of any legal or equitable remedies as may be available to it by law.

IN WITNESS WHEREOF, _____, Trustee of Mystic Studios Trust, has hereto set his/her hand and seal this _____ day of _____, 1992.

MYSTIC STUDIOS TRUST u/d/t dated
January 14, 1987

_____, Trustee and not
individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

_____, 1992

Then personally appeared the above-named _____, Trustee of Mystic Studios Trust, and acknowledged the foregoing instrument to be his/her free act and deed as Trustee, as aforesaid, before me

Notary Public
My Commission Expires:

EXHIBIT A

Unit No. 2, in the Mystic Bridge Building at 557 Tremont Street
Unit No. 3, in the Mystic Bridge Building at 557 Tremont Street
Unit No. 8, in the Mystic Bridge Building at 557 Tremont Street
Unit No. 9, in the Mystic Bridge Building at 557 Tremont Street
Unit No. 15, in the Mystic Bridge Building at 557 Tremont Street
Unit No. 16, in the Mystic Bridge Building at 557 Tremont Street
Unit No. 17, in the Mystic Bridge Building at 557 Tremont Street

MEMORANDUM

JULY 14, 1992

TO: BOSTON REDEVELOPMENT AUTHORITY and
THEODORE S. CHANDLER, ACTING DIRECTOR

FROM: THOMAS J. O'MALLEY, ASSISTANT DIRECTOR FOR
NEIGHBORHOOD HOUSING AND DEVELOPMENT

SUBJECT: SOUTH END URBAN RENEWAL AREA, PROJECT NO. MASS R-56,
GRANTEE'S COVENANT IN SUPPORT OF ART FOR THE ST. CLOUD
CONDOMINIUM WITH THE ST. CLOUD DEVELOPMENT TRUST, AND
THE BOSTON CENTER FOR THE ARTS, INC. AND CHESTNUT
ASSOCIATES, A JOINT VENTURE

SUMMARY: This memorandum requests authorization to execute a Release of Grantee's Covenant in Support of Art and Declaration of Restrictions in Support of Art for the St. Cloud Condominium to permit the rents of the Affordable Units to exceed 30% of the annual income of the artist or annual combined co-occupant income, to clarify that the affordable units may be rented to artists creating works of art such as literature, film and the performing arts and to correct the address of the BRA land benefiting from the restriction.

Background

On July 12, 1984, the Boston Redevelopment Authority ("BRA") granted Final Designation to Boston Center for the Arts and Chestnut Associates, Joint Venture to develop the two buildings located at 557 and 569 Tremont Street in the South End to a mixed unit development. The developer created twenty-three (23) market-rate residential condo units, nine (9) below-market artists' studio rentals and ground floor commercial and restaurant space.

Covenant

A Grantee's Covenant in Support of Art (the "Covenant") (see attached) was attached to the Land Disposition Agreement between St. Cloud Development Trust, a joint venture of Chestnut Associates and the Boston Center for the Arts, Inc., and the BRA, dated January 28, 1985 (the "LDA") as Exhibit D and attached to the Deed from the BRA to the St. Cloud Development Trust, dated January 28, 1985 (the "Deed") as Exhibit B. The Covenant required that at least 5,970 square feet of space in the Mystic Bridge Building at 557 Tremont Street be used exclusively for the nine (9) affordable units to be rented to artists who require studio space and whose household incomes do not exceed 80% of the median family income for the Boston Metropolitan Area. In addition, the rent for each of the nine (9) affordable units was not to exceed 30% of the annual income for each such artist. Annual certification of artists' qualifications is required. The Covenant is binding for thirty (30) years (1985-2015) and may be extended for ten (10) additional years.

Financial Review

The market-rate condominiums have been sold and occupied since 1988. The affordable artists' rental units were transferred to Mystic Studios Trust by Condominium Unit Deed dated January 14, 1987 and were rented in late 1987 and early 1988.

The anticipated rentals from the nine (9) artists' studios fell short of the developer's expectations. At the same time, the developer did not inform the Assessing Department that the nine (9) studios were under a deed restriction and the units were taxed at market rate for 1987 and 1988. After falling behind on the real estate taxes, a second mortgage LEND loan and the condominium fees, Mystic Studios Trust asked the BRA for relief and on April 9, 1992, the BRA Board authorized the sale of the two (2) vacant artists' studios (Units 1 and 10) and required that the net proceeds from the sales be used to pay the overdue real estate taxes, to make the second mortgage LEND loan current and to pay overdue condominium fees and late fees.

Current Status of Workout

The next step in the work-out of this project is to increase the rents on the seven (7) remaining affordable units to a level that equals the expenses. In order to do so, the provision requiring that the rent on each of the affordable units not exceed 30% of the annual income of each artist must be removed from the Covenant. By removing said provision, Mystic Studios Trust is not capped in the amount of rent it can charge based on the artist's income. This change will give Mystic Studios Trust the option of (1) renting to artists with higher incomes (however, not exceeding 80% of the median family income for the Boston Metropolitan Area) or (2) setting the rents which support expenses, are within 80% of the Standard Metropolitan Statistical Area (SMSA) but may be greater than 30% of income for a particular artist tenant.

In addition, Mystic Studios Trust has asked that the Covenant be clarified to allow the rental of the affordable units to artists creating works of art such as literature, film and the performing arts. Lastly, the Covenant incorrectly referenced the BRA land benefiting from the Covenant.

In order to delete the provision in the Grantee's Covenant in Support of Art requiring that the rent for each affordable unit not exceed 30% of the annual income of each artist or the annual combined co-occupant income, to allow the rental of the affordable units to artists creating works of art such as literature, film and the performing arts, and to correct the address of the BRA land benefiting from the restriction, it is recommended that the present Grantee's Covenant in Support of Art be released and a Declaration of Restrictions in Support of Art be placed on the seven (7) remaining affordable units.

An appropriate vote follows:

VOTED: That the Director be and hereby is authorized to execute the document entitled, the Release of Grantee's Covenant in Support of Art and Declaration of Restrictions in Support of Art in substantially the form attached hereto and/or any other documents deemed necessary and appropriate by the Director and the Chief General Counsel to permit the rents of the affordable artists' studios to exceed 30% of the annual income of each artist or the annual combined co-occupant income, to clarify that the affordable units may be rented to artists creating works of art such as literature, film and the performing arts, and to correct the address of the BRA land benefiting from the restriction.

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GRANTEE'S COVENANT IN SUPPORT OF ART

The Grantee covenants for the Grantee, its successors and assigns, and every successor in interest, that at least five thousand nine hundred and seventy (5,970) square feet of space, in that portion of the Property known as the Mystic Bridge Building shall be apportioned and used exclusively for the purpose of leasing nine (9) dwelling units to artists of low or moderate income, as defined hereafter, for combined use as working studios and residences. Artists of low or moderate income shall mean persons whose primary occupation consists of the creation of tangible works of art, such as painting and sculpture, which require studio space and whose income, i.e. that amount, or combined amount, upon which he or she, and any proposed co-occupants, are required to pay Federal income taxes, does not exceed 80% of the median family income for the Boston Metropolitan Area. The rent for each of the aforesaid nine units shall not exceed 30% of the annual income of each such artist or the annual combined co-occupant income. Lease terms shall not exceed a one year period. The Grantee shall annually provide to the Grantor certification that all rents, tenant incomes and tenant occupations satisfy the terms and conditions of this Covenant. This restriction is intended to benefit property of the Grantor, located at 557-563 Tremont Street, and abutting the Property burdened hereby, which property is devoted to uses promoting the growth of the arts in the City of Boston. This Covenant is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty years from the date this Covenant is recorded, at which time this Covenant may be extended for one period of ten years in the manner provided by law.

The consideration for the conveyance of the Property described in the Land Disposition Agreement and Deed, includes the Grantee's obligations as set forth in this Covenant, and the parties mutually agree that any violation of said Covenant or any of its terms and conditions would cause damages to the Grantor in an amount difficult to ascertain. It is therefore agreed by the Grantor and the Grantee that in the event of any violation(s) of the terms and conditions hereof remaining uncured for a period of sixty (60) days or more after receipt of written notice, the damages flowing from such violation(s) shall consist of that amount of income received by the Grantee as a result of said violation(s). Provided, however: if the Grantee is acting in good faith and with due diligence with regard to its obligation(s) hereunder including, without limitation, its obligation(s) to cure, and if the Grantee is prevented from seasonably curing any violation(s) for causes beyond its control, then, in that event, the Grantee shall not be liable for damages described herein for such violation(s). The payment of any such damages by the Grantee shall not preclude the Grantor's pursuit of any legal or equitable remedies as may be available to it by law.